

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LAVASTONE CAPITAL LLC,

Plaintiff,

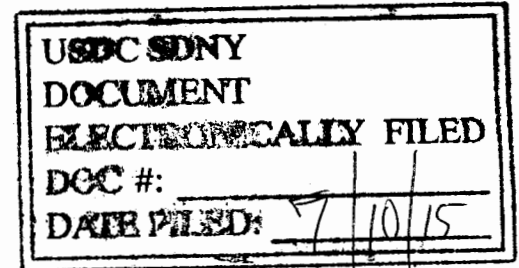
-v-

COVENTRY FIRST LLC, LST I LLC,
LST II LLC, LST HOLDINGS LTD.,
MONTGOMERY CAPITAL, INC., ALAN
BUERGER, REID BUERGER, CONSTANCE
BUERGER, AND KRISTA LAKE,

Defendants.
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14-cv-7139 (JSR)

ORDER



JED S. RAKOFF, U.S.D.J.

In this action, plaintiff Lavastone Capital Inc. brings federal and state causes of action against defendants Coventry First LLC, LST I LLC, LST II LLC, and LST Holdings Ltd., Montgomery Capital, Inc., and four individuals, namely Alan Buerger, Reid Buerger, Constance Buerger, and Krista Lake (who are the owners and/or executive officers of the corporate defendants). The remaining causes of action are: violations of RICO, 18 U.S.C. § 1962(c); conspiracy to violate RICO, 18 U.S.C. § 1962(d); fraud; fraudulent inducement; breach of contract; breach of implied covenant of good faith and fair dealing; negligent misrepresentation; breach of fiduciary; aiding and abetting breach of fiduciary duty; and unjust enrichment. See Complaint ¶¶ 264-407; Order dated Feb. 2, 2015, at 2-3.

This Order addresses cross motions for summary judgment filed by plaintiff and defendants on May 18, 2015. Plaintiff moves for

summary judgment in its favor on all remaining claims; defendants similarly move for summary judgment in their favor on all remaining claims, except for aspects of the breach of contract claim. Separately, defendant Constance Buerger moves for summary judgment in her favor on all claims (on the grounds that there is no basis for the federal claims against her and that the Court lacks personal jurisdiction over her on the state claims).

Following full briefing and oral argument, the Court rules as follows:

Plaintiff's motion for summary judgment in its favor on its breach of contract claim is granted (except as to Ms. Buerger) so far as it asserts that defendants breached the Origination Agreements by marking-up prices on life policies sold to Lavastone that defendants acquired after Lavastone had provided a commitment to purchase the policy. Both sides' summary judgment motions are denied with respect to the remaining contractual disputes, including whether defendants breached the Origination Agreements by allegedly overcharging for brokers' fees and whether defendants breached the Servicing and the Confidentiality Agreements.

The summary judgment motions of both sides are denied as to all other remaining claims (including, *inter alia*, on the issues of damages, statute of limitations, and other relief sought), with the exception of Constance Buerger's independent motion for summary judgment, which is granted in its entirety.

Ms. Buerger is therefore dismissed from this action. All other parties are reminded that trial of this case will commence on August 27, 2015 at 9:00 a.m.

An opinion stating the reasons for these rulings will issue in due course.

SO ORDERED.

Dated: New York, NY
July 10, 2015


JED S. RAKOFF, U.S.D.J.